

**DONATION AGREEMENT, PEDESTRIAN EASEMENT AND
TEMPORARY RIGHT OF ENTRY FOR CONSTRUCTION**

Effective Date: _____

Authorizing Ordinance No. _____

City: City of San Antonio

City's Mailing Address: P.O. Box 839966
San Antonio, Texas 78283

Rio Perla: Rio Perla Properties, L.P.

Rio Perla's Mailing Address: 303 Pearl Parkway, Suite 300
San Antonio, Texas 78215

Broadway SA: Broadway SA Investors GP, LLC

Broadway SA's Mailing Address: 303 Pearl Parkway, Suite 300
San Antonio, Texas 78215

Licensed Area: The cross-hatched area depicted and labeled as the "Project Limits Within City Property" on the attached Exhibit A.

Westbank Easement: The area described and depicted on the attached Exhibit B, which is located on land owned by Broadway SA.

Eastbank Easement: The cross-hatched area depicted on Exhibit C, which is located on land owned by Rio Perla and subject to relocation as provided below.

Background: Rio Perla operates a development adjacent to the San Antonio River Walk. Rio Perla has proposed installing a covered bridge ("**Bridge**") across the San Antonio River (the "**Bridge Project**"). The Historic and Design Review Commission of the City of San Antonio has approved the placement and the design of the Bridge as an enhancement of the River Walk in case #2012-234. This Agreement (1) grants Rio Perla authority, subject to certain conditions, to enter the Licensed Area for the completion of the Bridge Project and to maintain the Bridge as constructed, (2) grants City the right to allow the public to access the Bridge by crossing the Westbank Easement and the Eastbank Easement, subject to the terms, conditions and provisions set forth below, and (3) transfers ownership of the Bridge to City upon completion of construction.

Consideration: Rio Perla and the City's mutual desire for the completion of the Bridge Project to provide enhanced public access across the San Antonio River in the vicinity of the Bridge and Rio Perla's commitment to install and maintain the Bridge as set forth below.

Pedestrian Access: Rio Perla shall leave open pedestrian access to the River Walk sidewalk on both sides of the San Antonio River through the term of this Agreement subject to temporary closures as necessary to install and maintain the Bridge. Any temporary closures lasting longer than 24 hours shall require prior written approval of City acting by and through the City's Director of Downtown Operations. During any temporary closure, Rio Perla shall place appropriate directional signage to indicate closure and identify nearest alternate route that is handicapped accessible. Rio Perla shall revise signage if requested to do so by City.

Access Easements

1. Rio Perla hereby grants to the City (1) the right for the Bridge to remain in its installed location and (2) the right of pedestrian access, and to allow all members of the public the right of pedestrian access, across the Eastbank Easement for the purpose of accessing the Bridge; provided, however, that such right of access shall not commence until such time as the Bridge Project is completed and the Bridge is opened to the public. Notwithstanding the preceding, Rio Perla may from time to time during the term of this Agreement elect to relocate the access provided by the Eastbank Easement with alternate ADA accessible access via either (a) an elevator that provides access from the Bridge to the San Antonio River Walk (the "***Elevator***"), or (b) walkways and ramps providing access from the Bridge to a point along the San Antonio River Walk that is no more than three hundred fifty feet (350') from the nearest point at which the Bridge crosses above the San Antonio River Walk on the east bank (the "***Alternate Ramp***"); provided, however, that all such walkways and ramps shall be a minimum of five (5') feet wide except at points where the location of buildings, trees, grades, or other physical constraints make it impracticable to make it five feet (5') wide in which case no less than three feet (3') of passage shall always be provided around any physical constraints or barriers (such Elevator or the Alternate Ramp referred to herein sometimes as the "***Alternate Access***"). For purposes of constructing such Alternate Access, the City hereby grants Rio Perla a right of entry to access such portions of the Licensed Area and such other City property as is reasonably necessary for construction of the Alternate Access, subject to the terms, conditions and provisions above related to Pedestrian Access. Upon completion of such alternate access, Rio Perla shall have the right to file an addendum to this Agreement amending and replacing the easement description set forth on Exhibit C with a description or depiction of the revised access easement.
2. Broadway SA hereby grants to the City (1) the right for the Bridge to remain in its installed location and (2) the right of pedestrian access, and to allow all members of the public the right of pedestrian access, across the Westbank Easement for the purpose of accessing the Bridge; provided, however, that such right of access shall not commence until such time as the Bridge Project is completed and the Bridge is opened to the public.

Right of Entry: City, subject to the terms and conditions contained herein, hereby grants to Rio Perla the right to enter into and occupy the Licensed Area for the purpose of (1) completion of the Bridge Project, (2) for the continued maintenance of the Bridge, and (3) construction of the Alternate Access, and for no other purpose.

Bridge Maintenance: Following completion of the Bridge, Rio Perla shall maintain the Bridge and the Elevator (if applicable) (the “*Public Improvements*”) in good repair until such time as Rio Perla elects to turnover maintenance of the Public Improvements to the City pursuant to the provisions hereof. As such time as Rio Perla may elect to turnover maintenance of the Public Improvements to the City, Rio Perla shall give written notice to the City of its election (the “*Turnover Notice*”); provided, however, that in no event shall the Turnover Notice be given prior to the date that is twenty (20) years following the Effective Date hereof. Upon receipt of the Turnover Notice, the City shall have sixty (60) days to inspect the Public Improvements and give notice to Rio Perla of any repairs required for purposes of placing the Public Improvements in good repair prior to the City assuming maintenance of the Public Improvements (the “*Repair Notice*”). Rio Perla shall then complete the repairs identified in the Repair Notice to the City’s reasonable satisfaction whereupon the City shall assume all obligations to maintain the Public Improvements. Without modifying the foregoing, the City and Rio Perla acknowledge that the San Antonio River Authority (“*SARA*”) has agreed to assume certain responsibilities related to the Public Improvements, including payment for the utility charges associated with the lighting and operation of the Public Improvements, pursuant to a separate agreement between Rio Perla and SARA.

Bridge Completion: Rio Perla shall complete the Bridge Project within eighteen months from the Effective Date of this Agreement.

Term of the Agreement: Rio Perla’s commitment to maintain the Public Improvements and Rio Perla’s right of entry shall continue until such maintenance obligations are transferred to the City (as set forth above) and the access easements granted hereunder shall continue for so long as the Bridge remains open to the public in its installed location.

Permits and Inspections: Rio Perla shall obtain all necessary governmental permits and inspections required for the Project, including without limitation from the Department of Development Services of the City of San Antonio.

Compliance with laws: Rio Perla shall comply with all applicable federal, state and local laws.

Condition of Licensed Area: Rio Perla shall repair any damage to the Licensed Area caused by Rio Perla actions performing the Bridge Project or while performing its ongoing maintenance obligations as required by this Agreement. Such repairs shall include replacement of damaged landscaping and shall be done to the reasonable satisfaction of City.

Indemnity: RIO PERLA AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY FROM ANY AND ALL CLAIMS IN ANY WAY ARISING FROM RIO PERLA’S ACTIONS UNDER THIS AGREEMENT.

Insurance: Rio Perla and Rio Perla's contractors shall carry adequate levels of insurance for Rio Perla's and Rio Perla's contractor's activities on the Licensed Area. Rio Perla shall have its insurance agents, or its contractors insurance agents, issue certificates of insurance listing City as an additional insured under such policies and shall have any changes made to such policies as may be reasonably requested by City's Risk Manager. City shall have full authority to restrict Rio Perla's access to the Licensed Area until such insurance certificates have been delivered, reviewed and approved by City.

Certifications and Warranties: Upon completion of the Bridge, Rio Perla shall assign to City all warranties and certifications obtained by Rio Perla from any and all contractors, subcontractors, engineers or other design consultants involved in the Bridge Project.

Ownership of the Bridge: Upon completion of the Bridge Project including final governmental inspections, and final acceptance of the Bridge Project by City, City shall become the owner of the Bridge.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this agreement is executed to be effective the ____ day of _____ 2013.

City of San Antonio

By:
Title:

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the ____ day of _____, 2013, by _____, Assistant City Manager of THE CITY OF SAN ANTONIO, a Texas municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, this agreement is executed to be effective the 29 day of April 2013.

Rio Perla Properties, L.P.,
a Texas limited partnership

By: Rio Perla Management, L.L.C.,
a Texas limited liability company,
its general partner

By: [Signature]
Name: William G. Shown
Title: Vice President of the General Partner

fw

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the 29 day of April, 2013, by William G. Shown the _____ Rio Perla Management, L.L.C., a Texas limited liability company, the general partner of RIO PERLA PROPERTIES, L.P., a Texas limited partnership, on behalf of said limited liability company as general partner of said limited partnership.



Patricia A. Stillwagon
Notary Public, State of Texas

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, this agreement is executed to be effective the 29 day of April 2013.

Broadway SA Investors GP, LLC,
a Texas limited liability company

Lewis F. Westerman

By: Lewis F. Westerman
Title: Vice President

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the 29 day of April, 2013, by Lewis F. Westerman of BROADWAY SA INVESTORS GP, LLC, a Texas limited liability company, on behalf of said limited liability company.



Patricia A. Stillwagon
Notary Public, State of Texas

[SIGNATURES CONTINUE ON NEXT PAGE]

[illegible]

Exhibit B
Westbank Easement



LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES

FOR

THE PEARL BRIDGE WEST PEDESTRIAN EASEMENT

A 0.030 acre, or 1,286 square feet more or less, easement tract, out of a 1.602 acre tract, conveyed to Broadway SA Investors GP, LLC in General Warranty Deed recorded in Volume 14203, Pages 1911-9117 of the Official Public Records of Real Property of Bexar County, Texas, in New City Block (N.C.B.) 6791 of the City of San Antonio, Bexar County, Texas. Said 0.030 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone:

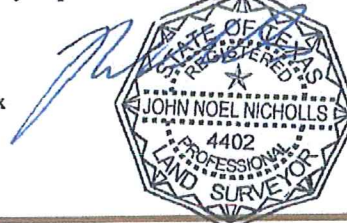
BEGINNING: At a point at the west corner of the herein described tract, on the northeast right-of-way line of East Myrtle Street, a 50-foot right-of-way, as shown on City Engineers Map No. 19, the southwest line of said 1.602 acre tract, from which a found ½" iron rod with cap marked "RPLS4612" at the intersection of the northeast right-of-way line of Myrtle Street and the southeast right-of-way line of East Elmira Street bears, N 66°01'16" W, a distance of 91.74 feet;

THENCE: Over and across said 1.602 acre tract the following calls and distances:
N 23°33'29" E, a distance of 9.20 feet to a point;
S 65°58'48" E, a distance of 27.69 feet to a point;
N 88°59'40" E, a distance of 52.44 feet to a point on the northwest line of the San Antonio River, as per San Antonio River Authority map, the southeast line of the 1.602 acre tract;

THENCE: S 15°57'52" W, along and with the northwest line of the said San Antonio River, the southeast line of said 1.602 acre tract, a distance of 31.64 feet to a found ½" iron rod with cap marked "RPLS4612", at the intersection of the northeast right-of-way of the aforementioned East Myrtle Street and the northwest line of the said San Antonio River, the south corner of said 1.602 acre tract;

THENCE: N 66°01'16" W, along and with the northeast right-of-way line of said E. Myrtle Street, the southwest line of said 1.602 acre tract, a distance of 79.57 feet to the POINT OF BEGINNING, and containing 0.030 of an acre in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground under job number 9432-07 and a survey description and map prepared under job number 9047-13 by Pape-Dawson Engineers, Inc.

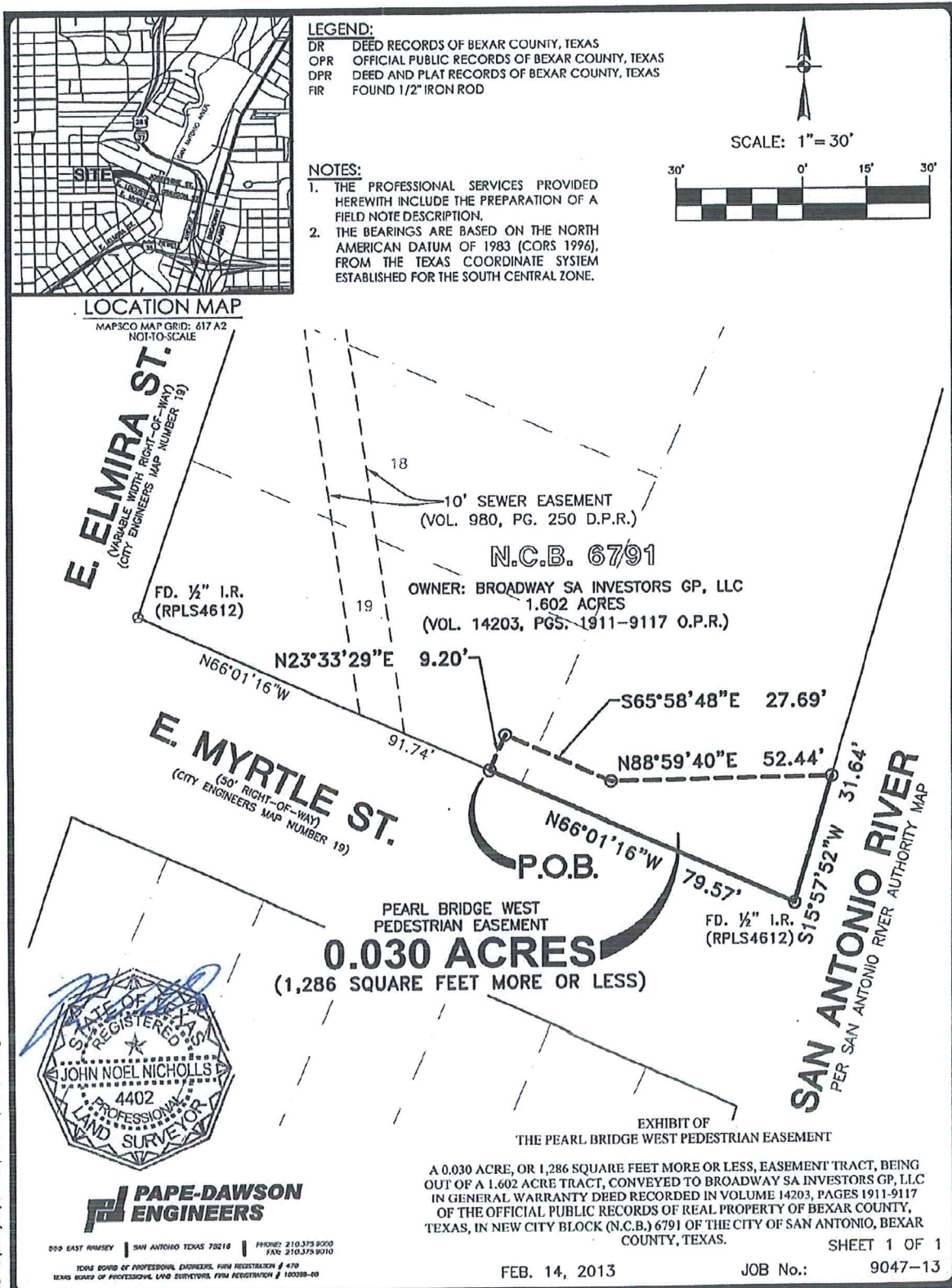
PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: February 14, 2013
JOB No.: 9047-13
DOC.ID.: N:\Survey\13\13-9000\9047-13\Word\9047-13-FN.docx



SAN ANTONIO / AUSTIN / HOUSTON

555 East Ramsey San Antonio, Texas 78216
P 210.375.9000 F 210.375.9010 www.pape-dawson.com

Exhibit B **Westbank Easement (Continued)**



Drawn: Feb. 14, 2013, 7:49pm User ID: Aherrera
File: N:\Survey\13\13-9047-13.dwg

Exhibit C
Eastbank Easement

